

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF ALABAMA

James McConico, Jr.
Plaintiff

RECEIVED
MAR 19 A 9:34
DEBRA P. HACKETT, CLERK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

vs.

CASE NO: 2:08CV189-MEF

Commissioner Robert Allen
Governor Bob Riley
Defendants

MEMORANDUM OF LAW, WHETHER McCONICO'S CLAIM
MEETS THE REQUIREMENT OF A SERIOUS PHYSICAL
INJURY OF THE PRISON LITIGATION REFORM ACT

QUESTION PRESENTED

WHETHER McCONICO'S CLAIM THAT GANG MEMBERS ARE DAILY
PSYCHOLOGICALLY TORTURING HIM, INFLECTING
PHYSICAL AND MENTAL INJURIES TO HIM, MEET THE
REQUIREMENT OF SERIOUS PHYSICAL INJURY OF THE PRISON
LITIGATION REFORM ACT

BRIEF ANSWER

A Federal Circuit Court of Appeals in Doe v. Welborn, No. F. 3d 520 69th Cir. (aard) found gang members inflicting psychological injury, is not precluded suit by prisoners under the Eighth Amendment.

STATEMENT OF FACTS

On the 18th day of January, 2008 Mc Gisco was transferred back to Helms Correctional Facility. Placed in cell K-3, a former gang member a young man Mc Gisco didn't know by the name of Kenneth Williams was assigned in the cell next door to him K-4. Got wind of what the gang members were about to do to Mc Gisco and out of the blue told Mc Gisco to turn to the christian daily bread booklets given to them by the chaplain and to read January 21, 2008. It dealt with steadfast and courage that Dr. Martin Luther King sought from God when he was afraid. The former gang member 25 years of age Kenneth Williams was trying to prepare Mc Gisco for the nefarious conduct the gang members were going to assault him with.

The gang members started working in three shifts psychologically assaulting Mc Gisco, a strategy they call killing behind the doors. This psychological gang strategy wherein the gang members call Mc Gisco homosexual caricatures all day and night to deprive him of sleep, social discord, causing him to suffer elevation of his high blood pressure, dizziness, vision impairment and headaches; stress causing his ulcers to hurt and paranoia. Mc Gisco has been subject to this psychological

torment for 60 days and night 24 hours a day and is physically and mentally deteriorating ^{with} injuries further.

DISCUSSION

McGrig invokes the exception to the Prison Litigation Reform Act because he is labeled with the three strike provisions of the Act. Prior to the enactment of the Prison Litigation Reform Act [PLRA]. The exception is serious physical injury.

The defendant's once put on notice of the psychological assault by the gang members. The psychological assault then became preventable psychological assault itself and McGrig's physical injuries became preventable, rather than any form of assault, that then gave rise to a compensable claim under the Eighth Amendment. [McGrig's present injuries are elevation of his high blood pressure, causing dizziness, vision impairment and headaches, sleep deprivation, ulcer hurting because of stress and lack of sleep and PARANOIA.] See: FARMER v. BRENNER, 511 U.S. 825, 825, 114 S. Ct. 1970, 1974 128 L. Ed 2d 811 (1994)

McGrig's claim of psychological assault in fact is inflicting serious physical injuries upon him. That if continued another sixty days (60) days will become fatal. In the form of a ^{stroke} ~~stroke~~, bleeding of his ulcer's that could put him into shock as has occurred before, lack of sleep causing death and PARANOIA leads to permanent mental phobias.

All of these facts mention herein thus far satisfy proof of actual injury and the threat of death is allowed to continue.

But this type of claim, psychological injury even if Mc Gisco wasn't suffering serious physical injuries daily. He would be entitled to injunctive relief to prevent a substantial risk of serious injury from ripening to actual harm. See: Doe v. Welborn, 110 F. 3d 520, 524 44 footnote 3 (9th Cir. 1997).

Based upon the facts of this claim Mc Gisco has shown sufficient serious physical injury. Based upon his claim that the defendant's have breached their duty owed to him and he is suffering cognizable legal harm that is a serious physical injury as prescribed by the PLRA.

CONCLUSION

This 1983 civil complaint is adjudicable by this United States District Court. As Mc Gisco has shown he has suffered serious physical injuries and is suffering them everyday housed in the segregation unit by the defendant's at Holman Unit, under the psychological torture of the new terrorist of the ADOC, gang members.

Respectfully submitted,

for Mc Gisco

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of March, 2008, I have served a copy of this "~~MEMORANDUM~~ ~~OF LAW~~", upon the following parties via, United States Mail postage prepaid:

Comm. Robert Allen

Ala. Dept. of Corrections

P.O. Box 301501

Montgomery, AL 36130-1508

Governor Bob Riley

Governor's Mansion

Montgomery, AL 36104

Jim McCarty

#117395 - K-3

Holman Unit 3400

Affmore, AL 36503